

NEW APPLICATION



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BEFORE THE ARIZONA CORPORATION COMMISSION

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Arizona Corporation Commission

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BRENDA BURNS
Commissioner

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SUSAN BITTER SMITH
Commissioner

BOB BURNS
Commissioner

IN THE MATTER OF THE JOINT) DOCKET NOS. T-20882A-13-0114
APPLICATION OF TNCI OPERATING) T-03975A-13-0114
COMPANY LLC AND TRANS NATIONAL)
COMMUNICATIONS INTERNATIONAL, INC.) APPLICATION
(DEBTOR-IN-POSSESSION) FOR APPROVAL)
OF THE TRANSFER OF CUSTOMER BASE)
AND ASSETS)

**JOINT APPLICATION FOR APPROVAL OF THE
TRANSFER OF CUSTOMER BASE AND ASSETS**

TNCI Operating Company LLC ("TNCI-OpCo") and Trans National Communications International, Inc. (Debtor-In-Possession) ("TNCI-DIP") (together, "Applicants"), by their undersigned representatives and pursuant to A.R.S. § 40-285(A) and R14-2-1107 of the Arizona Administrative Code, respectfully request approval from the Arizona Corporation Commission ("Commission"), to the extent required, for TNCI-OpCo to acquire the customers (including the customers' contracts) and certain assets¹ of TNCI-DIP through a sale pursuant to Section 363 of the United States Bankruptcy Code (the "Transaction").² As a result of the Transaction, TNCI-DIP's customers will be transferred to TNCI-OpCo, which will become the service provider for

¹ Applicants note that TNCI-DIP does not own any physical assets (facilities, switches or other equipment) located in Arizona that are used or useful in the provision of intrastate telecommunications service.

² *In re Trans National Communications International, Inc.*, Chapter 11, Case No. 11-19595-WCH, U.S. Bankr. Court (E.D. Mass.).

1 those customers. As described below, the Transaction will be virtually transparent to customers of
2 TNCI-DIP in terms of the services that those customers receive and the rates and terms of those
3 services -- even though structured as a Section 363 asset purchase under the Bankruptcy Code, the
4 Transaction will appear to customers and the public more like a transfer of control since TNCI-
5 OpCo will have the same "TNCI" name with which customers are familiar, will maintain the same
6 rates and terms of service, and will share many of the same customer service, technical,
operational and managerial personnel as TNCI-DIP.

7 In support of this filing, Applicants provide the following information:

8 **I. INTRODUCTION AND REQUEST FOR EXPEDITED TREATMENT**

9 On October 9, 2011, Trans National Communications International, Inc. filed a voluntary
10 petition for relief under Chapter 11 of Title 11, U.S.C. §§ 101 et seq., as amended, in the United
11 States Bankruptcy Court for the District of Massachusetts (the "Bankruptcy Court"). Throughout
12 the proceeding, TNCI-DIP has continued to operate its business and provide telecommunications
13 services to its customers. The Bankruptcy Court approved the Transaction on March 13, 2013.
14 The Agreement (as defined below) and Sale Order provide for an Initial Closing following receipt
15 of approvals from the Federal Communications Commission ("FCC"),³ and for additional closings
16 at approximately 45-day intervals until the Final Closing, which will occur on or before the 180th
17 day following the Initial Closing. At each closing, TNCI-DIP will assign to TNCI-OpCo those
18 assets and customers for which applicable state governmental approvals have been obtained in
19 order to complete the assignment. Given the Chapter 11 status of TNCI-DIP, Applicants submit
20 that the public interest would be served by the prompt transition of the business to TNCI-OpCo as
21 quickly as possible, and therefore urge that the Commission promptly approve the requested
22 transfer to permit the transfer of the Arizona customers and assets at the earliest possible time.

23
24 ³ The Initial Closing is currently scheduled for April 30, 2013.

1 **II. DESCRIPTION OF THE APPLICANTS**

2 **A. TNCI Operating Company LLC**

3 TNCI-OpCo is a newly formed Delaware limited liability company with principal offices
4 located at 114 E. Haley Street, Suite A, Santa Barbara, California 93101. TNCI-OpCo is a wholly
5 owned subsidiary of TNCI Holdings LLC (“TNCI Holdings”), a Delaware limited liability
6 company. TNCI Holdings is wholly owned by investment funds managed by Garrison Investment
7 Group (collectively, the “Garrison Group”), a leading middle market investor.

8 TNCI-OpCo does not currently provide telecommunications services. Accordingly,
9 Applicants are seeking the requisite approvals to assign TNCI-DIP’s FCC licenses and, where
10 permitted under state laws, its state certifications and permits, to TNCI-OpCo. However,
11 Applicants understand that the TNCI-DIP’s certifications cannot be assigned under Arizona law.
12 Accordingly, TNCI-OpCo separately submitted an application for a certificate of convenience and
13 necessity to enable it to continue to provide the same services as TNCI-DIP’s customers currently
14 receive from TNCI-DIP, *see* Docket No. T-20882A-13-0108 (the “Certificate Application”), and
15 urges that the Commission expedite its consideration of that request to enable the Transaction to
16 be completed as soon as possible.

17 TNCI-OpCo is managed by individuals with significant experience in the
18 telecommunications industry and will share many of the same customer service, technical,
19 operational and managerial personnel as TNCI-DIP. Biographies of the key personnel of TNCI-
20 OpCo were attached as Exhibit E to the Certification Application and are incorporated by
21 reference herein. Further, TNCI-OpCo has been funded by Garrison Group. *Pro forma* financial
22 statements of TNCI-OpCo are being provided to staff as part of the Certification Application and
23 are incorporated by reference herein. As demonstrated by this information, TNCI-OpCo has the
24 managerial, technical and financial qualifications to provide high quality telecommunications
25 services to the customers of TNCI-DIP.

1 **B. Trans National Communications International, Inc. (Debtor-In-Possession)**

2 TNCI-DIP is a Delaware corporation with a principal business address at 2 Charlesgate
3 West, Boston, Massachusetts 02215. TNCI-DIP offers an array of communications services
4 including local and long distance service, audio/web conferencing, dedicated Internet Protocol
5 ("IP")-enabled, integrated voice and data services, private line, frame relay, and enhanced network
6 solutions. TNCI-DIP only provides service to business and enterprise customers.

7 In Arizona, TNCI-DIP is authorized to provide resold long distance telecommunications
8 service and resold and facilities-based local exchange telecommunications service pursuant to
9 authority granted in Docket Nos. T-03975A-00-1065 and T-03975A-04-0499, respectively.
10 TNCI-DIP is also authorized to provide intrastate telecommunications services in every other state
11 and the District of Columbia. TNCI-DIP is authorized by the FCC to provide interstate and
12 international telecommunications services.

12 **III. DESIGNATED CONTACTS**

13 Questions or any correspondence, orders, or other materials pertaining to this filing should
14 be directed to the following.

15 Michael T. Hallam
16 Lewis and Roca LLP
17 40 North Central Avenue
18 Phoenix, AZ 85004-4429
19 602-262-5340 (tel)
20 602-734-3886 (fax)
21 mhallam@LRLaw.com

22 For TNCI-OpCo:

23 Jean L. Kiddoo
24 Brett P. Ferencak
25 Bingham McCutchen LLP
26 2020 K Street, N.W., Suite 1100
27 Washington, DC 20006-1806
28 202-373-6000 (tel)
29 202-373-6001 (fax)
30 jean.kiddoo@bingham.com
31 brett.ferenchak@bingham.com

32 With a copy to:

33 Jeffrey Compton
34 CEO/President
35 TNCI Operating Company LLC
36 114 E. Haley Street, Suite A
37 Santa Barbara, CA 93101
38 jcompton@bluecasa.com

1 For TNCI-DIP:

2 Andrew Isar
3 Millar Isar Inc.
4 4423 Point Fosdick Drive, N.W.
5 Suite 306
6 Gig Harbor, WA 98335
7 253-851-6700 (tel)
8 866-474-3630 (fax)
9 aisar@millarisar.com

10 With a copy to:

11 Brian Twomey, President
12 Trans National Communications
13 International, Inc.
14 2 Charlesgate West
15 Boston, MA 02215
16 btwomey@TNCII.com

17 **IV. DESCRIPTION OF THE TRANSACTION**

18 Pursuant to an Asset Purchase Agreement, dated as of January 31, 2013 (the
19 “Agreement”), TNCI-OpCo will acquire certain of the assets of TNCI-DIP, including TNCI-DIP’s
20 customer accounts and contracts, telecommunications equipment, and, to the extent permitted
21 under applicable law and regulations, certificates, licenses, registrations or other authorizations to
22 provide intrastate, interstate, and international telecommunications services. The Bankruptcy
23 Court approved the Agreement and the Transaction contemplated thereby on March 13, 2013. The
24 Agreement and Sale Order provide for an Initial Closing following receipt of approvals from the
FCC, and for additional closings at approximately 45-day intervals until the Final Closing, which
will occur no later than the 180th day following the Initial Closing. Pursuant to the Agreement
and Sale Order, at each closing TNCI-DIP will assign to TNCI-OpCo those customers accounts
and contracts and assets for which applicable governmental approvals have been obtained in order
to complete the assignment.

 In the interest of assuring seamless and uninterrupted service, all of the assigned customers
will continue to receive service from TNCI-OpCo under the same rates, terms and conditions of
services as were previously provided by TNCI-DIP. As noted above, TNCI-DIP provides services
only to business and enterprise customers. Its contracts with those customers will be assigned to
TNCI-OpCo without any changes in their rates, terms or conditions. In its Certification
Application, TNCI-OpCo has filed tariffs that contain the same rate, terms and conditions of
service as TNCI-DIP’s existing tariffs. Future changes in the rates, terms and conditions of

1 service to the affected customers will be undertaken pursuant to customer contracts and the
2 applicable federal and state notice and tariff requirements.

3 Accordingly, as noted above, even though structured as a Section 363 asset purchase under
4 the Bankruptcy Code, the Transaction will appear to customers and the public more like a transfer
5 of control since TNCI-OpCo will have the same "TNCI" name with which customers are familiar,
6 will have the same rates and terms of service, and will share many of the same customer service,
7 technical, operational and managerial personnel as TNCI-DIP.

8 **V. PUBLIC INTEREST CONSIDERATIONS**

9 Applicants respectfully submit that the proposed Transaction serves the public interest.
10 The Transaction will result in the assignment of TNCI-DIP customers to a financially stable
11 company that will continue to provide telecommunications services to such assigned customers
12 without interruption. TNCI-OpCo's operations will be overseen by a well-qualified management
13 team with substantial telecommunications experience and technical expertise. In addition, the
14 proposed Transaction is structured to assure an orderly transition of customers from TNCI-DIP to
15 TNCI-OpCo. In accordance with the terms of their service contracts and the rules and procedures
16 of the FCC and applicable state(s), including this Commission, customers have been notified of
17 the proposed transaction and the change in their telecommunications provider from TNCI-DIP to
18 TNCI-OpCo. A sample of the notice that was sent to TNCI-DIP's Arizona customers on March
19 29, 2013, at least 30 days prior to their transfer, is provided in Exhibit A.

20 **VI. REQUEST FOR WAIVER OF SLAMMING AND CRAMMING RULES**

21 As noted above, customers have been notified of the proposed Transaction and the change
22 in their telecommunications provider from TNCI-DIP to TNCI-OpCo. A sample of the customer
23 notice is provided in Exhibit A. Applicants respectfully request, to the extent necessary, that the
24 Commission grant a waiver of AAC R14-2-1904 *et seq.* and any other applicable anti-slamming
regulations that may be inconsistent with the FCC's rules regarding the transfer of customer bases.

1 Applicants respectfully request that the Commission, to the extent applicable, grant a
2 waiver of AAC R14-2-2001-2007 (the "Cramming Rules"), which, among other things, require a
3 telecommunications company to obtain authorization from a customer when ordering
4 telecommunications products and services in order to prevent unauthorized carrier charges on their
5 bill. As described herein, TNCI-OpCo is in the process of purchasing TNCI-DIP's assets,
6 including its customers, and the affected customers will receive the same services as they currently
7 receive under the same rates, terms and conditions. Applicants do not believe that the Cramming
8 Rules apply to this proceeding because TNCI-DIP's customers are being transferred to TNCI-
9 OpCo. No new products and services are being ordered from TNCI-OpCo and no new charges
will be assessed as a result of the Transaction.

10 To the extent that the Cramming Rules arguably apply to this Transaction, Applicants
11 respectfully submit that it is in the public interest to grant a waiver of the rules in this case because
12 current TNCI-DIP customers will receive at least 30 days' notice of the Transaction as required by
13 the FCC's customer migration rules; therefore, customers will be given full notice that their
14 current services will be provided by TNCI-OpCo after the Transaction is completed, and that there
will be no change in the quality or cost of their services as a result of the Transaction.

15 **VII. REQUEST FOR WAIVER OF DISCONTINUANCE RULES**

16 Applicants respectfully request that the Commission grant a waiver of AAC R14-2-1107,
17 which governs a telecommunications company's discontinuance of competitive local exchange or
18 interexchange services in the state. Applicants do not believe that the discontinuance rule applies
19 to this proceeding because it involves the purchase of TNCI-DIP's assets (*i.e.*, its customers) by
20 TNCI-OpCo; therefore, service to the acquired customers is not being discontinued.⁴ Current
21 TNCI-DIP customers will receive at least 30 days' notice of the Transaction as required by the
22 Federal Communications Commission's customer migration rules. It would be confusing for

23 ⁴ Commission Staff has previously come to this same conclusion. See Docket No. T-03761A-04-
24 0710, Addendum to Staff Report (Dec. 27, 2004) (stating "Staff does not believe that the transfer of certain
customers qualifies as a discontinuance of service or an abandonment of any portion of its service area.
Therefore, Staff does not believe that AAC R14-2-1107 applies").

1 customers to *also* receive a notice regarding a TNCI-DIP discontinuance of service or for the
2 planned customer transfer notice to include a discussion regarding a discontinuance since no
3 affected customer will be discontinued as a result of the Transaction. *See* Decision No. 70706
4 (waiving discontinuance rules in transfer of control case).

5 In the event that the Commission does not believe that a waiver of the rule in its entirety is
6 appropriate, Applicants respectfully request that the Commission grant a waiver of AAC R14-2-
7 1107(B), which requires a telecommunications company providing competitive local exchange or
8 interexchange service to publish legal notice of an application to discontinue or abandon services
9 in counties affected by the application within 20 days of the application. As stated herein, TNCI-
10 OpCo will acquire the customer accounts of TNCI-DIP in the state of Arizona, and those
11 customers will continue to receive high-quality telecommunications services at the same rates,
12 terms and conditions as currently provided by TNCI-DIP. Written notice of this Transaction and
13 of the customer base transfer will be provided to TNCI-DIP's Arizona customers via First Class
14 mail at least 30 days prior to the transfer. Published notice to the entire community is therefore
15 unnecessary. The Commission's waiver of R14-2-1107(B) will serve the public interest and
16 Applicants will provide the affected customers with ample notice of the Transaction.

15 **VII. REQUEST TO CANCEL THE CERTIFICATES AND TARIFFS OF TNCI-DIP**

16 Following the Transaction, TNCI-OpCo will hold TNCI-DIP's customer accounts and
17 assume its operations in Arizona. Therefore, TNCI-DIP requests that, upon notification from the
18 Applicants that the Transaction is complete with regards to Arizona customers and assets, the
19 Commission cancel the CCNs and tariffs of TNCI-DIP.

20 **IX. CONCLUSION**

21 WHEREFORE, for the reasons set forth above, Applicants request the Commission grant
22 all authority necessary for TNCI Operating Company LLC to acquire the customers and certain of
23 the assets of Trans National Communications International, Inc. (Debtor-In-Possession). Further,
24

Applicants request that the Commission expeditiously act on this Application, so that TNCI-DIP's customers can be assigned to TNCI-OpCo at the earliest possible closing.

RESPECTFULLY SUBMITTED this 22nd day of April, 2013.

LEWIS AND ROCA LLP



Michael T. Hallam
40 North Central Avenue
Phoenix, AZ 85004

Attorneys for TNCI Operating Company LLC



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ORIGINAL and thirteen (13) copies
of the foregoing filed this 24th day
of April, 2013, with:

The Arizona Corporation Commission
Utilities Division – Docket Control
1200 W. Washington Street
Phoenix, Arizona 85007

Copy of the foregoing hand-delivered
This 24th day of April, 2013, to:

Lyn Farmer, Esq.
Chief Administrative Law Judge
Hearing Division
Arizona Corporation Commission
1200 W. Washington Street
Phoenix, Arizona 85007

Janice Alward, Esq.
Chief Counsel, Legal Division
Arizona Corporation Commission
1200 W. Washington Street
Phoenix, Arizona 85007

1 Mr. Steven M. Olea, Director
2 Utilities Division
3 Arizona Corporation Commission
4 1200 W. Washington Street
5 Phoenix, Arizona 85007

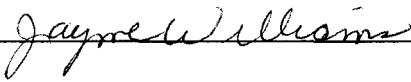
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EXHIBIT A

Sample Customer Notice



2 CHARLES GATE WEST
BOSTON, MA 02215

March 28, 2013

«MailToName»

«MailStreet1» «MailStreet2»

«MailCity», «MailState» «MailZip»-«MailZipPlus4»

Regarding Account #«AccountNumber» / «AccountName»

Dear Valued Customer:

Great news! TNCI Operating Company LLC ("TNCI") has reached an agreement with Trans National Communications International, Inc. to acquire its business, including your account. The new TNCI will do business under the familiar "TNCI" name and will assure that you continue to receive the same great service and dedication to your telecommunications needs.

Please rest assured that the transaction will not affect the services you currently receive. You will continue to receive services with the same rates, features, terms and conditions as you currently enjoy. Any changes to your service following the transaction will be made in compliance with your contract, service terms and applicable federal and state regulatory requirements. TNCI will automatically become your telecommunications provider on or after May 1, 2013. (The specific date(s) of the transfer of your interstate and intrastate telephone services may differ somewhat depending upon when we receive the applicable federal and state regulatory approvals.)

This change will be completely seamless for you and you do not need to do anything in order for it to occur -- TNCI will take care of all of the details and TNCI will be responsible for any change fees associated with transferring your account to the new TNCI. However, it is important that you be aware of the following information. You are responsible for continued payment of your monthly recurring and usage charges throughout this period. Unless you have made arrangements on your own to switch your telephone service to a different telephone company prior to the date that your services are transferred to TNCI, your account will automatically be transferred and your service contract assigned to TNCI.¹ In addition, any deposit or prepayment you have paid, if any, will be transferred with your account to TNCI. Although subject to the terms of your current contract you have the option to select another telephone carrier, we value your business and we hope that TNCI may continue to serve you. If you should choose another telephone provider you will need to contact that carrier directly to arrange for the change prior to the transfer of your services to TNCI and also provide TNCI with notice per existing service terms. We note that it can take several weeks for a new carrier to make the switch and you may also incur service initiation fees from that provider such as service order, installation and other similar charges associated with establishing a new service account.

Our mission is to provide superior products and services to our customers. We want to thank you for your continued support. If you have any questions regarding your current services or would like more information about the transaction, please call our customer service department toll-free at 800-800-8400, which will remain the same following the transfer of your services.

TNCI looks forward to serving you.

Sincerely,

Jeff Compton
President & Chief Executive Officer
TNCI Operating Company LLC


Brian C. Twomey
President & Chief Executive Officer
Trans National Communications International, Inc.

¹ If you have previously arranged for a preferred carrier "freeze," TNCI will suspend that freeze in order to make the transfer and reinstate it upon completion of a transfer to TNCI. If you have selected an alternate local telephone provider prior to a transfer to TNCI, you will need to have that provider reinstate your preferred carrier freeze.

COMMONWEALTH OF MASSACHUSETTS)
)
COUNTY OF SUFFOLK)

VERIFICATION

I, Jeff Compton, state that I am Chief Executive Officer and President of TNCI Operating Company LLC (the “Company”); that I am authorized to make this verification on behalf of the Company; that the foregoing filing was prepared under my direction and supervision; and that, with respect to the Company, the same are true and correct to the best of my knowledge, information and belief.



Jeff Compton
Chief Executive Officer and President
TNCI Operating Company LLC

Subscribed and Sworn to me this 20th day of March, 2013.

Brenda M. Mc
Notary Public


My Commission Expires: 6/28/13

SEAL

COMMONWEALTH OF MASSACHUSETTS)
)
COUNTY OF SUFFOLK)


VERIFICATION

I, Brian Twomey, state that I am President of Trans National Communications International, Inc. (the “Company”); that I am authorized to make this verification on behalf of the Company; that the foregoing filing was prepared under my direction and supervision; and that, with respect to the Company, the same are true and correct to the best of my knowledge, information and belief.



Brian Twomey
President
Trans National Communications International, Inc.

Subscribed and Sworn to me this 20th day of March, 2013.


Notary Public

My Commission Expires: 6/28/13

SEAL